IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

L.P.A. No.285 of 1999 & W.P.NO.16461 of 2002

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LPA.NO.285 OF 1999:

(Letter Patent Appeal under clause 15 of the Letters Patent against the order dated 03.09.1999 in C.M.A.No.1284 of 1999 on the file of the High Court. Preferred against the order dated 30.04.1999 in E.A.No.296 of 1999 in E.P.No.61/98 in O.S.No.209 of 1969 on the file of the Court of I Senior Civil Judge, City Civil Court, Hyderabad)

Between:

M.A. Khadeer Siddiqui s/o M.A. Raheem, 56 years
resident of Hyderabad

..... APPELLANT.

AND

A.P.Housing Board, represented by its the Vice Chairman and Housing Commissioner, M J Road, Hyderabad

.....RESPONDENT

WRIT PETITION NO : 16461 of 2002

Between:

M.A. Khadeer Siddiqui s/o M.A. Raheem
residing at Hyderabad

..... PETITIONER

AND

A.P. Housing Board, rep. By its Vice Chairman and Housing Commissioner, M J Road, Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction declaring the inaction of the respondent in finalizing the sale transaction in favour of the petitioner as arbitrary, unfair and opposed to all cannons of law and unjust.

For the appellant in LPA and for the Petitioner in W.P.: MR.V.VENKATARAMANA

Counsel for the Respondent in both LPA & WP: MR.J.PRABHAKAR

The Court made the following :

ORAL ORDER:

(Per Hon'ble The Chief Justice)

1. When L.P.A.No.285 of 1999 arising out of judgment of learned Single Judge dated 03.09.1999 in A.A.O.No.1284 of 1999 reversing the Order in E.A.No.296 of 1999 in E.P.No.61 of 1998 in O.S.No.209 of 1969 dated 30.04.1999 on the file of I Senior Civil Judge, City Civil Court, Hyderabad, came up for hearing before us, we had substantially heard learned counsel for the parties. It was brought to our notice that Writ Petition No.16461 of 2002 is also pending consideration, filed by the appellant. We directed the writ petition to be posted before us, which has now been posted before us.

2. The appellant is not a party to the suit, which was filed by the respondent-Board against 14 defendants. When the execution petition was filed for recovery of possession covered by the suit filed by the respondent – Board, appellant, who was in possession and made claim against the tenant – defendant No.13, was dispossessed on 19.02.1999. He filed a petition under Order 21 Rule 99 of Code of Civil Procedure for restoration of possession of the land bearing MCH.No.16-6-30, admeasuring 840 square yards, situated at Chaderghat, Hyderabad. It was *inter-alia* pleaded that aggrieved party, namely, defendant No.13, was not impleaded as party to the suit, which was instituted in the year 1967 though registered in the year 1969. She was impleaded as party in the year 1973. The appellant claimed to be tenant and stated that he was not bound by the judgment and decree obtained by the respondent – Board, since he is not impleaded as a party to the suit for recovery of the property. I Senior Civil Judge, City Civil Court, Hyderabad, allowed the appellant's petition filed under Order 21 Rule 99, C.P.C., which order was challenged in appeal by the respondent – Board. Appeal of the respondent - Board was allowed by the impugned order dated 03.09.1999.

3. I Senior Civil Judge, City Civil Court, upheld that the appellant was in possession of the property as a tenant of defendant No.13. At the most in execution of the decree obtained by it, respondent - Board could have taken symbolic possession of the property and could not have taken actual, physical delivery of possession. Thus it was found that the appellant was illegally dispossessed from the property and entitled for restoration of the same.

4. It was brought to our notice by the learned counsel for the appellant that Ex.A.1 dated 15.01.1996 is a representation submitted to the Board by the appellant representing that either he may be continued as a tenant or the property may be sold to him. It is also stated that in Writ Petition No.16461 of 2002 also, there is a prayer made to issue direction against the respondent – Board for finalising the sale transaction in favour of the appellant for the schedule property, pursuant to the recommendations alleged to have been made by the Vice Chairman of the respondent – Board.

5. After hearing learned counsel for the parties on this aspect, we are of the view that interest of justice would be met in issuing appropriate direction to the respondent – Board for due consideration of the representation stated to have been filed by the appellant. Learned counsel for the appellant also submits that he would not press his claim for restoration of possession as such and, therefore, he would withdraw the appeal preferred by him and appropriate direction be issued to the respondent – Board in that regard, for which there is no objection on behalf of the respondent – Board. Since Ex.A.1 representation dated 15.01.1996 and what is stated in the writ petition itself are two different documents, on which the respondent – Board will

have to take a decision, interest of justice would be fairly met in case liberty is reserved to the appellant to submit a comprehensive fresh representation. Representation be submitted by the appellant to the respondent – Board within a period of four weeks from the date of receipt of the order, with direction to the respondent – Board to take appropriate action within six weeks from the date of receipt of the said representation. Till such time the representation is decided, *status quo* shall be maintained by the respective parties.

6. In the result, Letters Patent Appeal is dismissed as withdrawn and Writ Petition is disposed of with direction as above. No costs.

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(DEVINDER GUPTA, C.J.,)

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(C.V.RAMULU, J)

13th AUGUST, 2004.

BSS.

To

1.The Vice Chairman and Housing Commissioner, A.P. Housing

Board, M J Road, Hyderabad

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